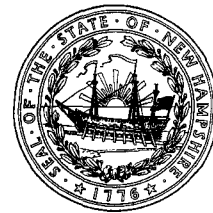




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

Baco Da Setta, L.L.C.
160 Emerald Street
Keene, NH 03431

Re: Silk Mill Properties
AST Facility No. 200308029

ADMINISTRATIVE ORDER
BY CONSENT
No. WMD 06-002

A. INTRODUCTION

This Administrative Order by Consent is issued by the Department of Environmental Services, Waste Management Division to, and with the consent of, Baco Da Setta, L.L.C., pursuant to RSA 146-A:11-c. This Administrative Order by Consent is effective upon signature by all parties.

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, New Hampshire.
2. Baco Da Setta, L.L.C. ("Baco") is a New Hampshire Limited Liability Company having a principle office and mailing address of 160 Emerald Street, Keene NH 03431.

C. STATEMENTS OF FACTS AND LAW

1. RSA 146-A authorizes DES to establish requirements for the operation of aboveground petroleum storage facilities and to control oil discharge or spillage in surface water or groundwater. Pursuant to RSA 146-A:11-c, the Commissioner of DES has adopted NH Admin. Rules Env-Wm 1402 to establish requirements for the registration, design, installation, operation, maintenance, and monitoring of aboveground petroleum storage facilities and Env-Wm 1600 to establish procedures and requirements for notification, reporting, response actions, investigation, remediation, and management of sites where discharges of oil have occurred.
2. Baco is the registered facility owner of two 12,500-gallon horizontal aboveground petroleum storage tanks ("AST systems") of an unknown age containing heating oil that are located at Silk Mill Properties, 160 Emerald Street, Keene, NH, ("the Facility") and further identified by DES site number 200308029 and AST identification number 0000205 ("the Property").
3. The AST systems at the Facility are subject to the requirements of RSA 146-A, Env-Wm 1402, and Env-Wm 1600.

4. On August 5, 2005, a Division inspector conducted a compliance inspection at the Facility and noted compliance deficiencies which were identified in a report dated August 9, 2005, (the "Report") issued to a representative of Baco.
5. The Report notified Baco that compliance was to be achieved within 45 days of the issue date of the Report and to notify the Division of the deficiency corrections in order to avoid enforcement action per RSA 146-A:15 and Env-C 600 for those deficiencies.
6. Among those deficiencies identified in the Report, the Division was not notified that the following were corrected within 45 days of the date of the Report:
 - a. Emergency and initial response actions had not been conducted to mitigate the discharge of oil within the secondary containment dike at the Facility;
 - b. The ASTs were not properly marked;
 - c. The ASTs did not have a product level gauge;
 - d. The ASTs did not have a high level warning alarm;
 - e. There are no records that inspections of the AST interiors had ever been conducted; and
 - f. The Facility did not have a current Spill Prevention, Control, and Countermeasure ("SPCC") Plan.
7. Part Env-Wm 1604 requires the responsible party to conduct certain emergency response actions and initial response actions at a site following a discharge of oil.
8. Env-Wm 1402.18(f) requires that all AST systems have tank markings as described in Env-Wm 1402.18(f).
9. Env-Wm 1402.24 requires that all AST systems have overfill protection consisting of a product level gauge in accordance with Env-Wm 1402.24(a) and a high level alarm in accordance with Env-Wm 1402.24(b).
10. Env-Wm 1402.29(c) requires the owner of all AST systems of an unknown age having a capacity of 5,100 or more gallons to thoroughly empty and clean the interiors of the tanks and have detailed interior tank inspections performed by a qualified professional engineer ("P.E.") or API 653 certified tank inspector by April 25, 2002 to determine the suitability of continued service of the AST systems.
11. Env-Wm 1402.30 requires that all AST facilities shall have a written SPCC Plan prepared in accordance with 40 CFR Part 112.
12. On October 7, 2005, Baco conducted emergency and initial response actions to the satisfaction of the Division.

D. DETERMINATION OF VIOLATIONS

1. Baco Da Setta, L.L.C. has violated Env-Wm 1402.18(f) by failing to properly mark the ASTs.
2. Baco Da Setta, L.L.C. has violated the overfill prevention requirements of Env-Wm 1402.24 by failing to install a gauge or other measuring device on the ASTs and for failing to have a high level warning alarm that is both audible and visible to the person controlling the transfer of oil to the ASTs.
3. Baco Da Setta, L.L.C. has violated Env-Wm 1402.29 by failing to perform detailed interior tank inspections on the ASTs.
4. Baco Da Setta, L.L.C. has violated Env-Wm 1402.30 by failing to prepare and implement a SPCC Plan prepared in accordance with 40 CFR Part 112.

E. ORDER

Based on the above findings, DES hereby orders Baco Da Setta, L.L.C., and Baco Da Setta, L.L.C. agrees, to undertake and complete the following actions in accordance with the time schedules specified:

1. Baco will not introduce any additional oil into the existing ASTs until all items in paragraphs E.2.a through E.2.d have been completed.
2. **No later than August 31, 2006**, either take the existing AST systems out of service in accordance with Env-Wm 1402.12(c) through (e), or:
 - a. Mark the ASTs with the tank number, the safe fill height of the tank, the product stored, and the NFPA symbol as described in Env-Wm 1402.18(f);
 - b. Install product level gauges on the ASTs in accordance with Env-Wm 1402.24(a) and high level alarms on the ASTs in accordance with Env-Wm 1402.24(b);
 - c. Drain, clean, and conduct interior tank inspections on the ASTs in accordance with Env-Wm 1402.29(e); and
 - d. Prepare and implement an SPCC Plan prepared in accordance with 40 CFR Part 112 pursuant to Env-Wm 1402.30.
3. **No later than September 15, 2006**, provide written confirmation to DES that the tasks required by Paragraphs E.2 have been completed in accordance with this order.

4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order by Consent, to DES as follows:

Michael W. Juranty, P.E.
DES Waste Management Division
P.O. Box 95
Concord, NH 03302-0095
Fax No: (603) 271-2181
e-mail: mjuranty@des.state.nh.us

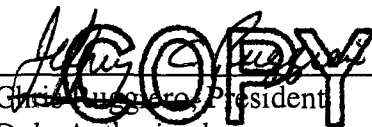
F. STIPULATED PENALTIES


Baco Da Setta, L.L.C. agrees to pay a stipulated penalty of \$2,000 per calendar month or portion thereof that compliance with each item in Section "E" is not achieved within the specified time. If stipulated penalties become due, payment shall be by certified check made payable to "Treasurer, State of New Hampshire" and mailed to DES Legal Unit, PO Box 95, Concord, NH 03302-0095, ATN: Michael Sclafani; immediately upon notice from DES that payment is required.

G. CONSENT AND WAIVER OF APPEAL


1. By execution of this Administrative Order by Consent, Baco Da Setta, L.L.C. agrees that this Order shall apply to and be binding upon Baco Da Setta, L.L.C., its officers, directors, successors and assigns, and agrees that this Order may be entered and enforced by a court of competent jurisdiction.
2. By execution of this Administrative Order by Consent, Baco Da Setta, L.L.C. waives any right to appeal this Administrative Order by Consent provided by statute, rule, or common law, including without limitation the right to appeal to the Waste Management Council, and waives any right to object to the entry and enforcement of this order by a court of competent jurisdiction.

Baco Da Setta, L.L.C.

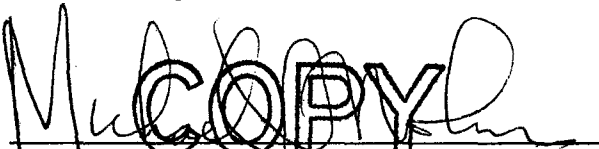

Chris Sclafani, President
Duly Authorized


Date 3/1/06

NH Department of Environmental Services


Anthony P. Giunta, P.G., Director
Waste Management Division

3/13/06
Date


Michael P. Nolin, Commissioner

03 16 06
Date

cc: Gretchen R. Hamel, Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Lynn A. Woodard, P.E., Supervisor
Michael W. Juranty, P.E., Chief
Chief, Keene Fire Department
Selectmen, City of Keene
Albert H. Weeks, Esq., 39 Vernon Street, Keene, NH 03431